

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF LEWIS COUNTY, WASHINGTON**

RE:

AMENDMENT OF PROFESSIONAL SERVICES)

AGREEMENT BETWEEN LEWIS COUNTY)

AND DONALD LARGEN)

RESOLUTION NO. 02 - 2002

WHEREAS, the Board of County Commissioners has reviewed a proposed amendment to the professional services agreement between Lewis County and Donald Lergen for providing professional services for environmental review work in conjunction with the Lewis County Comprehensive Plan and implementing development regulations for the rural portion of Lewis County and approved by the Board on April 9, 2001 pursuant to Resolution No. 01-136 and,

WHEREAS, there is a need for continued services by Mr. Lergen, not to exceed \$5,000, in Planning Commission meetings, Board workshops and in assistance with the presentations at the compliance hearings before the Western Washington Growth Management Hearing Board; and

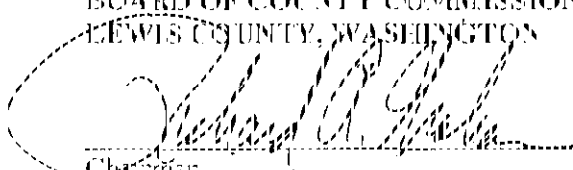
WHEREAS, it is proposed that the scope of work be revised to (1) amend the period of work to run from July 1, 2001 through June 30, 2002; (2) work with the Board in preparing the compliance report to the Western Washington Growth Management Hearing Board and assistance in the presentation of said report to said Hearing Board, and (3) raise the limit of the original contract to a sum not to exceed \$25,000.00; and

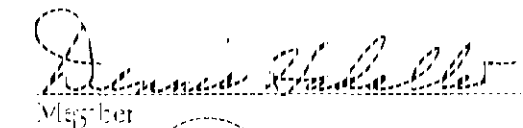
WHEREAS, it appears to be in the best public interest to authorize the execution of said Agreement for Lewis County; NOW THEREFORE

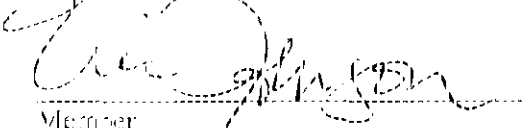
BE IT RESOLVED that the Board of County Commissioners hereby approves the amended Agreement contained herein and authorizes the Community Development Department Director to sign the same.

DONE IN OPEN SESSION this 20th day of May, 2002.

BOARD OF COUNTY COMMISSIONERS
LEWIS COUNTY, WASHINGTON

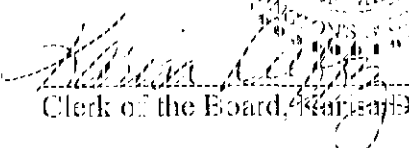
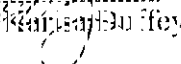

Chairman


Member


Member

ATTEST:




Clerk of the Board, 

Appendix A

**ATTACHMENT TO RESOLUTION 02- _____
AMENDED PROFESSIONAL SERVICES AGREEMENT BETWEEN LEWIS COUNTY
AND DONALD LARGEN.**

SCOPE OF WORK: To assist the county in preparation of a report to the Western Washington Growth Management Hearings Board in conjunction with a compliance hearing. Work will include attending such meetings and hearings as deemed necessary by the BOCC. Work may include meetings and communications with county staff, consultants and the BOCC on matters related to this work.

PERIOD OF WORK: the work shall begin July 1, 2001 and end June 30, 2002, this period may be extended by mutual agreement

COMPENSATION: The work will be billed at the following rates:

Consultant Billing Rate \$75.00 per hour

The Consultant shall be compensated for travel to, from, and within the City at the current IRS rate for mileage. Overhead mark-up for supplies and materials directly related to the type of work performed, as identified above: Ten Percent (10%)

The total maximum amount of this amended Agreement shall not exceed \$5,000 without prior approval.

AMENDED PROFESSIONAL SERVICES AGREEMENT
between
LEWIS COUNTY AND DONALD B. LARGEN

CONTRACT NO. _____

DON LARGEN, hereinafter called CONTRACTOR, and LEWIS COUNTY, hereinafter called COUNTY agree as set forth in this Agreement, including: General Conditions, Exhibit A and Special Conditions, copies of which are attached hereto and incorporated herein by this reference as fully as if set forth herein.

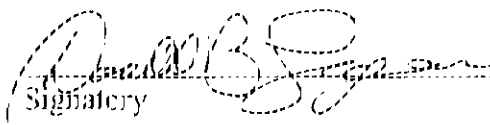
The term of this Agreement shall commence the 1st day of March, 2002. This agreement is renewable in two-year increments unless written notice of termination is provided either by the County or the service provider ninety or more days prior to the expiration of the term.

CONTRACTOR acknowledges and by signing this contract agrees that the Indemnification provisions set forth in Paragraphs 5, 13, 19 and 22 are totally and fully part of this contract and have been mutually negotiated by the parties.

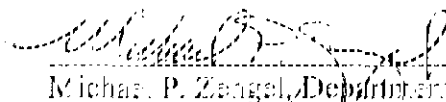
IN WITNESS WHEREOF, the parties have executed this Agreement this 23rd day of April, 2002.

CONTRACTOR:
DON LARGEN

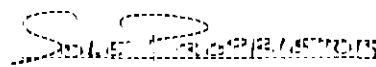
LEWIS COUNTY, DEPARTMENT OF
COMMUNITY DEVELOPMENT



Signatory



Michael P. Zengel, Department Director
(Departmental approval may require ratifying
Resolution by Board of County Commissioners.)



Title of Signatory
(Authorized to sign by the company By Laws)

Approved as to Form Only
JEREMY RANDOLPH, Prosecuting

Mailing Address:

Donald B. Largent
541 NE 59th Street
Seattle, WA 98105

Social Security No.:

538-55-0845

By: 

Civil Deputy Prosecutor

GENERAL CONDITIONS

1. **Scope of Contractor Services:**

The Contractor agrees to provide to the County services and any material set forth in the project narrative identified as Exhibit "A" during the agreement period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Agreement.

2. **Accounting and Payment for Contractor Services:**

Payment to the Contractor for services rendered under this Agreement shall be as set forth in Exhibit "A". Where Exhibit "A" requires payments by Lewis County, payment shall be based upon billings, supported unless otherwise provided in Exhibit "A", by documentation of units of work actually performed and amounts earned, including, where appropriate, the actual number days worked each month, total number of hours for the month, and the total dollar payment requested. Unless specifically stated in Exhibit "A" or approved in writing in advance by the official executing this Agreement for Lewis County, (hereinafter referred to as the "Contracting Officer") the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract.

Where required, the County shall, upon receipt of appropriate documentation, compensate the Contractor, no more often than weekly, through the County voucher system for the Contractor's service pursuant to the fee schedule set forth in Exhibit "A".

3. **Assignment and Subcontracting:**

No portion of this contract may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the Contracting Officer, or as set forth in Exhibit "A".

4. **Labor Standards and Contract Assistance:**

The Contractor shall comply with the provisions of the Lewis County Contract and Procurement Assistance Program as applicable, attached hereto as Special Conditions in Exhibit "B".

5. **Independent Contractor:**

The Contractor's services shall be furnished by the Contractor as an independent Contractor and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the Contractor as an independent Contractor. The Contractor acknowledges that the entire compensation for this Agreement is specified in Exhibit "A" and the Contractor is not entitled to any County benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to Lewis County employees.

Contractor will defend, indemnify and hold harmless the County, its officers, agents or employees from any loss or expense, including but not limited to settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.

6. **No Guarantee of Employment:**

The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor

or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

7. Taxes:

The Contractor understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Contractor authorizes the County to make withholding for any taxes other than income taxes (i.e., Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the Contractor's performance of this Agreement. The Contractor hereby agrees to indemnify the County against any demand to pay taxes arising from the Contractor's failure to pay taxes on compensation earned pursuant to this Agreement.

The County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes including, but not limited to: Business and Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the County does not hold title. The County is exempt from Federal Excise Tax.

8. Regulations and Requirement:

This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington, and to any other provisions set forth in Special Conditions.

9. Right to Review:

This contract is subject to review by any Federal or State auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Contracting Officer. Such review may occur with or without notice, and may include, but is not limited to, on site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for 3 years after contract termination, and shall make them available for such review, within Lewis County, State of Washington, upon request.

10. Modifications:

Either party may request changes in the Agreement. Any and all agreed modifications shall be in writing, signed by each of the parties.

11. Termination for Default:

If the contractor defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or make an assignment for the benefit of creditors, the County may, by depositing written notice to the Contractor in the U.S. mail, postage prepaid, terminate the contract, and at the County's option, obtain performance of the work elsewhere. If the contract is terminated for default, the Contractor shall not be entitled to receive

any further payments under the contract until work called for, as may be applicable under Exhibit "A", has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the County in completing the work, as may be applicable under Exhibit "A", including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

If a notice of termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

12. Termination for Public Convenience:

The County may terminate the contract in whole or in part whenever the County determines, in its sole discretion, that such termination is in the interests of the County. Whenever the contract is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit contract prices for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this contract by the County at any time during the term, whether for default or convenience, shall not constitute a breach of contract by the County.

13. Defense & Indemnity Agreement:

The Contractor agrees to defend, indemnify and save harmless the County, its appointed and elective officer and employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the County, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and an account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Contractor, his/her subcontractors, its successor or assigns, or its or their agent, servants, or employees, the County, its appointed or elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the County, its appointed or elected officials or employees. It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein.

14. Industrial Insurance Waiver:

With respect to the performance of this Agreement and as to claims against the County, its officers, agents and employees, the Contractor waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this Agreement extend to any claim brought by or on behalf of any employee of the Contractor. This waiver is mutually negotiated by the parties to this Agreement.

15. Venue and Choice of Law:

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action or litigation shall be in the courts of the State of

Washington in and for the County of Lewis. The Agreement shall be governed by the laws of the State of Washington.

16. Withholding Payment:

In the event the Contractor has failed to perform any substantial obligation to be performed by the Contractor under this Agreement and said failure has not been cured within the times set forth in this Agreement, then the County may, upon written notice, withhold all monies due and payable to Contractor, without penalty, until such failure to perform is cured or otherwise adjudicated.

17. Future Non-Allocation of Funds:

If sufficient funds are not appropriated or allocated for payment under this contract for any future fiscal period, the County will not be obligated to make payments for services or amounts incurred after the end of the current fiscal period. No penalty or expense shall accrue to the County in the event this provision applies.

18. Contractor Commitments, Warranties and Representations:

Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to fulfill such a commitment shall render the Contractor liable for damages to the County. A commitment includes, but is not limited to any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

19. Patent/Copyright Infringement:

Contractor will defend and indemnify the County from any claimed action, cause or demand brought against the County, to the extent such action is based on the claim that information supplied by the Contractor infringes any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the County in any action. Such defense and payment are conditioned upon the following:

- a. That Contractor shall be notified promptly in writing by County of any notice of such claim.
- lb. Contractor shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information in the event such claim of infringement is made, provided no reduction in performance or loss results to the County.

20. Disputes:

a. General

Differences between the Contractor and the County, arising under and by virtue of the Contract Documents, shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, rulings, instructions, and decisions of the Contracting Officer, shall be final and conclusive.

b. **Notice of Potential Claims**

The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Contracting Officer or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within 10 days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

c. **Detailed Claim**

The Contractor is not entitled to claim any such additional compensation, or extension of time, unless within 30 days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

21. **Ownership of Items Produced:**

All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection with the performance of this Agreement shall be the sole and absolute property of the County.

22. **Confidentiality:**

The Contractor, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Contractor in performance of this Agreement, except upon the prior written consent of the Lewis County Prosecuting Attorney or an order entered by a court after having acquired jurisdiction over the County. Contractor shall immediately give the County notice of any judicial proceeding seeking disclosure of such information. Contractor shall indemnify and hold harmless the County, its officials, agents or employees from all loss or expense, including, but not limited to settlements, judgments, setoffs, attorneys' fees and costs resulting from Contractor's breach of this provision.

23. **Notice:**

Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice shall be given by the Contractor to the Lewis County department Director for whom services are rendered, to wit: Michael Zengel, Director, Community Development Department, 150 NW North St., Chehalis, WA 98532-1900. Notice to the Contractor for all purposes under this Agreement shall be given to the address reflected above. Notice may be given by delivery or by depositing in the U.S. mail, first class, postage prepaid.

24. **Severability:**

If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.

25. **Waiver:**

Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument in writing, signed by the parties hereto.

26. **Survival:**

The provisions of paragraphs 5, 7, 9, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, and 25 and the provisions of any non-collusion affidavit required by paragraph 4, shall survive notwithstanding the termination or invalidity of this Agreement for any reason.

27. **Entire Agreement:**

This written contract represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

EXHIBIT "B"
SPECIAL CONDITIONS

A. Definitions

The COUNTY is the recipient of CONTRACTOR'S services, and at all times acts through its Board of County Commissioners. The Contact Officer of the COUNTY will be Connie L. Robins, CAO, or her designee.

B. Contractor Registration

The CONTRACTOR agrees and covenants to furnish unto the COUNTY proper evidence that the CONTRACTOR has fully complied with the State Licensing Law.

CONTRACTOR shall include his contractor's license number in the space provided in the "Conditions of Proposal".

C. Non-Discrimination (Lewis County Funds)

The CONTRACTOR should be aware that public funds are being used to assist in this project. During the performance of this contract, the CONTRACTOR agrees as follows:

1. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause.
2. The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.
3. The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, notice to be provided by the agency contracting officer, advising the labor union or worker's representative of the contractor's commitments under Section 202 or Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in a conspicuous place available to employees and applicants for employment.
4. The CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

5. The CONTRACTOR will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books and records for purposes of investigation to ascertain compliance with such rules, regulations and orders.
6. In the event of the CONTRACTOR'S non-compliance with the non-discrimination clauses of this contract or with any such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contract may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
7. The CONTRACTOR will include the provisions of Paragraphs (1) through (7) in every sub-contract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontract or vendor. The CONTRACTOR will take such action with respect to any sub-contract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for non-compliance. Provided, however, that in the event the CONTRACTOR becomes involved in, or is threatened with "litigation with a sub-contractor or vendor as a result of such direction by the contracting agency", the CONTRACTOR may request the United States to enter into such litigation to protect the interest of the United States.

D. Original Specifications

It is hereby expressly agreed by and between the parties involved that in any matter, dispute, suit, or proceedings arising or in any way growing out of this contract in which it may be necessary to introduce into evidence the original of such specifications, that a printed copy thereof may be used in lieu thereof with like force and effect as though the original was produced.

E. Eight Hour Law and Payment for Labor

The CONTRACTOR agrees to comply with RCW 49.28.010.065 providing that no laborer, workman or mechanic in the employ of the CONTRACTOR, sub-contractor, or other person doing or contracting to do the whole or any part of the work contemplated by this contract, shall be permitted or required to work more than eight (8) hours in any one calendar day, provided that, in cases of extraordinary emergency, such danger to life or property, the hours of work may be extended, but in such cases the rate of pay for time employed in excess of eight (8) hours of each calendar day shall not be less than one and one-half times the rate allowed for this same amount of time during eight (8) hours' service. Any work necessary to be performed after regular working hours, or Sunday or legal holidays shall be performed without additional expense to the COUNTY.

Notwithstanding the above provisions, a CONTRACTOR may enter into an agreement approved by the employees in which the employees may work up to ten (10) hours in a calendar day for not more than four (4) calendar days in a week.

CONTRACTOR further agrees that said contract is terminable in case the CONTRACTOR shall violate the provisions of such act.

The CONTRACTOR, and sub-contractors shall further verify that:

1. He had not employed or retained any company or person (other than a full time bona fide employee working solely for the offerer) to solicit or receive this contract; and
2. He has not paid or agreed to pay any company or person (other than a full time bona fide employee working solely for the offerer) any fee, commission, percentage, or brokerage fee contingent upon or resulting from the award of this contract; and
3. He has not been asked or otherwise coerced, whether express or implied, into contributing funds, for any purpose as a condition to doing business with the COUNTY.

It is further agreed that in case any dispute arises as to what are the prevailing wages for the work of a similar nature and such dispute cannot be adjusted by the parties involved, the matter shall be referred for arbitration to the Director of the Department of Labor & Industries of the State and his decision therein shall be final, binding, and conclusive on all parties.

ATTACHMENT "A"

Name of person(s) performing work:

Type of work performed: Research, compilation of data, organization and preparation of documentation as required and necessary for completion of an Environmental Impact Statement (EIS) for the Lewis County Comprehensive Plan as required for compliance with the Growth Management Act and duties necessary for presentation as a spokesperson for the County to the Western Washington Growth Management Hearings Board during compliance hearings held in May and June, 2002. (See the attached 'Scope of Work'.)

The contractor will provide as a deliverable a Draft EIS as necessary to comply with the terms of the above-noted Intergovernmental Agreement, Contract No. s01-62900-055, attached hereto, attend public meetings and hearings as requested by the Board of County Commissioners, and will prepare and present testimony as required at Growth Management compliance hearings.

Amount of contract: It is not known what the exact final cost will be in conjunction with this project. However, after consultation with the County Special Deputy Prosecutor and the contractor, it is estimated to be approximately \$22,000 combined consultant time and costs, and that Contractor may not exceed \$25,000 combined time and costs without first having obtained written permission for the County. The contractor will provide monthly billings to the County, which are due and payable within 30 days of receipt of the billing.

Consultant Billing Rate:

\$75.00 per hour

The Consultant shall be compensated for travel to, from, and within the City at the current IRS rate for mileage. Overhead mark-up for supplies and materials directly related to the type of work performed, as identified above: Ten Percent (10%).

Start Date: The project is to commence immediately upon approval of this contract.

Date of completion: A draft EIS must be completed by June 30, 2001, and compliance hearings are scheduled to end by June 7, 2002. This agreement shall terminate June 30, 2001, unless extended by mutual agreement of all parties.